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June 17, 2018

Via ECF and Electronic Mail

Hon. Valerie E. Caproni
United States District Court Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *United States v. Percoco, et al.* (Case No. 16-cr-776) – Request to Adjourn Trial

Dear Judge Caproni:

We represent Alain Kaloyeros in the above-referenced matter. We write to seek an order precluding the Government from commenting on, or offering evidence relating to, analysis that the Government just disclosed to Dr. Kaloyeros late last night. We ask that this order remain in effect until we have been able to conduct our own analysis of the facts underlying the Government's analysis. We should be able to complete this analysis by Thursday. In the alternative, we write to request a three-day adjournment of the trial.¹

At 11:30pm last night, the Government produced 3500 material that suggests that they will assert at trial that Dr. Kaloyeros deleted certain emails from his private email account in the Fall of 2015. Between a review of this 3500 material and telephone conference calls with the Government today, it appears that Google produced to the Government pursuant to a search warrant two "snapshots" of Dr. Kaloyeros' Gmail account – one snapshot taken in October 2015 when the Government issued a preservation notice to Google, and the second snapshot taken in December 2015 when the Government obtained its search warrant. The Government asserts that various emails exchanged between Todd Howe and Dr. Kaloyeros which were present in the first snapshot are not present in the second, and must have been deleted during the two months that passed between these two snapshots.

We have immediately started to conduct our own analysis of these two snapshots but are having limited success lining up the necessary forensic support today. The Government advises us that both snapshots were produced by the Government as a single file in February 2017 so we anticipate being able to move forward rapidly once we are able to line up forensic support. In the meanwhile, we are hard-pressed to determine how to address the Government's eleventh

¹ Dr. Kaloyeros respectfully reserve the right to seek an additional adjournment based on additional information received from the Government.

Hon. Valerie E. Caproni

June 17, 2018

Page 2



hour analysis during opening statements, much less to cross-examine witnesses about the analysis.

Based on the foregoing, we have asked the Government to refrain from commenting on its analysis during its opening statement and to refrain from offering evidence about the alleged deletion until we have had a reasonable amount of time to understand the Government's analysis. The Government has declined to agree to this request. The Government has also declined to join us in a request for a short adjournment of the trial.

We write, therefore, to ask the Court to issue an order directing the Government to refrain from commenting on its analysis of alleged deletions from Dr. Kaloyeros' Gmail account during its opening statements and to refrain from offering evidence about the analysis until Dr. Kaloyeros has had an opportunity to conduct his own analysis of the Government's assertion. We believe that we should be able to complete our analysis by Thursday. In the alternative, we request an order delaying the start of the trial for three days.

We thank the Court for its consideration and are pleased to provide any additional information that the Court may need.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael C. Miller".

Michael C. Miller
Counsel for Defendant Alain Kaloyeros